

ORIGINAL

FILED
DISTRICT COURT OF GUAM

OCT 13 2005

MARY L.M. MORAN
CLERK OF COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

FLORENCIA Q. LEWIS)
)
Plaintiff,)
vs.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

CIVIL CASE NO. 05-00026

ANSWER OF THE UNITED STATES

Defendant United States of America, by and through its counsel, Leonardo M. Rapadas, United States Attorney for the Districts of Guam and the NMI, and Mikel W. Schwab, Assistant United States Attorney for said Districts, answers Plaintiff's Complaint in like numbered paragraphs as follows:

1. This paragraph sets forth jurisdictional allegations to which no response is required. To the extent an answer is required, Defendant DENIES.
2. ADMITS in part. DENIES in part. The United States ADMITS that Plaintiff flew from Guam in August of 2002, and underwent an angiogram, stent placement and angioplasty of her renal artery on August 12, 2002. The United States is

1 without sufficient information about the remainder of the averments, and therefor
2 DENIES those allegations.

3
4 3. This paragraph sets forth a legal conclusion to which no response is required. To
5 the extent an answer is required, Defendant DENIES.

6
7 4. This paragraph sets forth a legal conclusion to which no response is required. To
8 the extent an answer is required, Defendant DENIES.

9
10 5. Defendant is without sufficient information to either admit or deny the allegations
11 contained in paragraph 5 and, on that basis, DENIES those allegations.

12
13 6. Defendant is without sufficient information to either admit or deny the allegations
14 contained in paragraph 6 and, on that basis, DENIES those allegations.

15
16 7. Defendant is without sufficient information to either admit or deny the allegations
17 contained in paragraph 7 and, on that basis, DENIES those allegations.

18
19 8. This is a legal conclusion to which no response is required, however to the extent
20 an answer is required, defendant DENIES.

21
22 9. DENIES.

23
24 10. DENIES. The date on the SF 95 claim form is "8/11/04". The claim was received
25 by Tripler Army Medical Center on August 11, 2004.

26
27 11. Defendant is without sufficient information to either admit or deny the allegations
28 contained in paragraph 11 and, on that basis, DENIES those allegations.

1 12. Defendant is without sufficient information to either admit or deny the allegations
2 contained in paragraph 12 and, on that basis, DENIES those allegations.

3
4 13. DENIES.

5
6 14. DENIES.

7
8 15. DENIES.

9
10 16. DENIES.

11
12 17. DENIES.

13
14 18. DENIES.

15
16 19. DENIES.

17
18 20. DENIES.

19
20 21. DENIES.

21
22 22. DENIES.

23
24 The paragraph beginning with “Accordingly” sets forth Plaintiff’s prayer for relief to
25 which no response is required. To the extent this paragraph is deemed to contain allegations of
26 material fact, DENIES.

27 All allegations not specifically responded to above are DENIED. And further answering,
28 Defendant avers:

1 **AFFIRMATIVE DEFENSES**

2
3 **FIRST AFFIRMATIVE DEFENSE**

4 Defendant DENIES that it owed Plaintiff any duty under law; that any of its agents or
5 employees were negligent and/or breached any standard of care due the Plaintiff and/or engaged
6 in any conduct which was the proximate cause of the injuries, damages and losses allegedly
7 incurred by Plaintiff.

8
9 **SECOND AFFIRMATIVE DEFENSE**

10 Plaintiff's claim is diminished or completely barred by Guam law regarding
11 comparative/contributory negligence.

12
13 **THIRD AFFIRMATIVE DEFENSE**

14 Pursuant to 28 U.S.C. § 2675, Plaintiffs are prohibited from claiming or recovering an
15 amount against the United States in excess of that which was set forth in a claim presented to
16 the United States of America.

17
18 **FOURTH AFFIRMATIVE DEFENSE**

19 Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for
20 prejudgment interest against the United States of America.

21
22 **FIFTH AFFIRMATIVE DEFENSE**

23 Under 28 U.S.C. § 241 2(d)(1)(A), Plaintiff cannot recover attorney's fees from the
24 United States of America.

25
26 **SIXTH AFFIRMATIVE DEFENSE**

27 Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial.
28

1 SEVENTH AFFIRMATIVE DEFENSE

2 All future damages, if any, must be reduced to present value.

3
4 EIGHTH AFFIRMATIVE DEFENSE

5 The United States is entitled to offset for all amounts received by Plaintiff from the
6 United States and its agencies, and from all collateral sources, by reason of Plaintiff's alleged
7 injuries.

8
9 NINTH AFFIRMATIVE DEFENSE

10 Defendant reserves the right to amend its Answer with additional defenses of which it
11 may become aware as discovery progresses and to raise any other matter constituting an
12 avoidance or affirmative defense.

13
14 **WHEREFORE**, having fully answered all counts of the Complaint, Defendant prays that
15 Plaintiff takes nothing by way of her Complaint against it, that the same be dismissed, and that
16 judgment be awarded in favor of Defendant, together with costs and such other and further relief
17 as the Court deems appropriate in this case.

18 Dated this 13th day of October, 2005

19
20 LEONARDO M. RAPADAS
21 United States Attorney
22 Districts of Guam and the NMI

23 By:

24 MIKEL W. SCHWAB
25 Assistant U.S. Attorney

26 OF COUNSEL:

27 Laura L. Waterman, R.N., J.D.
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